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State of Louisiana
DIVISION OF ADMINISTRATION
OFFICE OF HUMAN RESOURCES

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COMMISSIONER OF ADMINISTRATION

DIVISION OF ADMINISTRATION

PERSONNEL POLICY NO. 22

EFFECTIVE DATE: **October 5, 1993**
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 8/1/03; 8/23/04

SUBJECT: **Overtime, Compensation for Overtime, and Fair Labor**
 Standards Act Status (Exempt and Non-Exempt)

AUTHORIZATION: Whitman J. Kling, Jr., Deputy Undersecretary

I. POLICY:

It is the policy of the Division of Administration (DOA):

- A.** That no employee will work overtime without prior approval from the supervisor unless an emergency exists. A section head may issue a blanket approval for overtime work to some or all of his employees at his discretion.
- B.** That the Fair Labor Standards Act (FLSA) status of employees, Exempt and Non-exempt shall be determined by the section head, subject to approval by the Appointing Authority.
- C.** That an employee shall first use time and one-half compensatory leave and then straight time compensatory leave prior to using annual leave or voluntary leave without pay. However, an employee whose absence is designated as FMLA eligible is not allowed to use time and one-half compensatory leave during the FMLA eligible absence.
- D.** That when the reason for an absence is eligible as sick leave under the Civil Service Rules contained in Chapter 11, then the employee **may always choose** to use sick leave when there is sufficient leave to his/her credit, and, if requested, shall be allowed to utilize any balance of time and one-half compensatory leave or straight time compensatory leave available. However, an employee whose absence is designated as FMLA eligible is not allowed to use time and one-half compensatory leave during the FMLA eligible absence.

- E.** That all or part of a balance of time and one-half and/or straight time compensatory leave **may** be paid to the employee at the discretion of the Appointing Authority at any time.
- F.** That the Appointing Authority may, at any time, require employees to take all, or part of their time and one-half and/or straight time compensatory leave. However, an employee whose absence is designated as FMLA eligible is not allowed to use time and one-half compensatory leave during the FMLA eligible absence.
- G.** That upon permanent movement of an employee from one appropriation to a different appropriation within the DOA, or upon transfer from the DOA to another department, or upon separation from the DOA:

 - 1.** **All** employees shall be paid for all unused time and one-half compensatory leave at a rate equal to his/her hourly pay rate.
 - 2.** **Non-exempt** employees **shall be** paid for all unused straight time compensatory leave earned hour for hour in accordance with the following schedule:

 - a.** 450 hours after January 1, 2004. All additional unused leave may be paid or cancelled and shall not be recredited to him upon his reemployment within the DOA.
 - b.** All hours after January 1, 2005.
 - 3.** **Exempt** employees **may be** paid for some or all unused compensatory leave earned hour for hour at the discretion of the Appointing Authority. All unused straight time compensatory leave, if not paid to the employee, shall be cancelled and shall not be recredited to him upon reemployment within the DOA.
- H.** That all employees will comply with the provisions of the FLSA, which takes precedence over this policy, State law, and Civil Service Rules.
- I.** That managers of the DOA shall prudently manage the work of staff in order to mitigate the need for overtime.

II. PURPOSE:

The purpose of this policy is to:

- A.** Assure consistent treatment of employees.
- B.** Prudently manage allocated fiscal resources.
- C.** Assign responsibility for administration of overtime compensation and to explain the process for adhering to the policy.

III. APPLICABILITY:

This policy shall be applicable to all employees in all sections within the DOA, both general and ancillary appropriation.

IV. DEFINITIONS:

A. Hour Worked:

- 1.** When used in this policy, “**hour worked**” also refers to a portion of an hour worked.
- 2. Conference Travel** - Hours spent in travel for the purpose of attendance at a conference, convention, seminar, workshop, training course, study group, and related activity (hereinafter referred to as “**conference travel**”) are defined as **hours worked** with the exceptions discussed below.
 - a.** When an employee chooses a different mode of travel than that offered by his employer, any additional hours of travel time incurred as a result of the employee’s decision to choose a different mode of travel shall not be considered hours worked.
 - b.** Hours worked will be considered ceased upon arrival at the destination, i.e.- conference site, hotel.

EXAMPLE: Employee’s regular work hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Employee leaves at 6:00 a.m. on a Monday morning to attend a conference away from his official domicile which begins at 9:00 a.m. that same morning. That same day, the employee leaves the conference site at 4:00 p.m. and arrives back at his residence at 7:00 p.m.

CREDITED WORK HOURS: Employee is credited with 4 hours of work time (6:00 a.m. to 8:00 a.m. and 5:00 p.m. to 7:00 p.m.).

Note: If travel is by airplane, the beginning period shall be two hours prior to the stated flight departure time and shall end at the time the employee reaches his destination.

3. **Regular Travel** - Hours spent in travel which is necessary to place the employee in the position to perform normal fieldwork inspections, on site visits, and similar activities (herein after referred to as “**regular travel,**”) will be considered **hours worked** with the exceptions discussed below:

- a. When an employee chooses a different mode of travel than that offered by his employer, any additional hours of travel time incurred as a result of the employee’s decision to choose a different mode of travel shall not be considered hours worked.
- b. Hours worked will be considered ceased upon arrival at the destination.

EXAMPLE: Employee’s normal work hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Employee leaves at 1:00 p.m. on Sunday afternoon to be in position to perform field site work the next morning. Employee arrives at destination at 6:00 p.m. on Sunday afternoon and performs no work functions for the remainder of the day.

CREDITED HOURS WORKED: Employee is credited with 5 hours of work time for the period 1:00 p.m. to 6:00 p.m.

4. **Emergency Travel** – Travel which occurs when an employee is called back to his official domicile for a critical situation. An hour spent in emergency travel from home to work is an **hour worked**.

EXAMPLE: An employee who has gone home after completing his day’s work is subsequently called out at night to travel to perform an emergency job, all time spent on such travel is work time.

5. An hour worked by an employee who, while in “on-call” status, is called to perform work, is an **hour worked** - whether the work is performed at home or at another work location.

6. If an employee is required to perform any assigned work while traveling, that time is counted as **hours worked**.

B. Hour Actually Worked:

When used in this policy, "**hour actually worked**" is an hour in which the employee is performing the duties of his position and does not include hours taken as leave (sick, annual, compensatory, or leave without pay), hours taken as a holiday, hours spent in jury duty, or hours which are not actually worked by the employee.

C. Hour Not Worked:

1. Ordinary travel between home and work.

For example, if an employee whose official domicile is in Baton Rouge has spent the day working in New Orleans, and passes through Baton Rouge on his way home, the time spent in travel from Baton Rouge to his residence in St. Francisville is not work time.

2. Bonafide meal times are not counted as hours worked.

D. Overtime Hour:

1. For the purpose of the FLSA, overtime is any hour (or portion thereof) actually worked over 40 hours in a workweek.
2. For the purpose of Civil Service Rules, overtime is defined in Chapter 21 of the Civil Service Rules as any hour worked:
 - In excess of the employee's regularly scheduled workday.
 - In excess of the employee's regularly scheduled work period.
 - On a holiday, including designated holidays.
 - During official closures.

E. Straight Time Compensatory Leave (in the context of this policy) is the same as straight compensatory leave, non-payable compensatory time, non-payable K, straight time compensatory time, straight time K, and hour for hour compensatory leave.

F. Time and One-half Compensatory Leave (in the context of this policy) is the same as time and one-half compensatory leave, payable compensatory time,

payable K, time and one-half K, FLSA compensatory leave, FLSA compensatory time, and FLSA K.

- G. Workweek** - Unless a specific exception has been authorized by the Appointing Authority, the workweek for the Division of Administration begins and ends at midnight on Sunday night.
- H. Official Domicile** – The official domicile of an officer or employee assigned to an office, exclusive of temporary assignments, shall be the city in which the office is located.
- I. Statement of Agreement or Understanding Regarding Compensation for Overtime Worked Form (attached)** - The written agreement by which employees certify that they understand that the State has the option to substitute time and one-half compensatory leave for time and one half pay.

V. PROCEDURE FOR THE DETERMINATION, REPORTING, AND DOCUMENTATION OF FLSA STATUS:

A. The Process for Status Determination

The process of determining the FLSA status, Exempt or Non-exempt for a position shall include the following steps:

- 1.** Employees earning an annual salary of \$23,660 or below:

Determine which employees earn \$23,660 or less annually. Designate any employees earning \$23,660 or less annually as Non-exempt.

The FLSA status of any employee earning an annual salary of \$23,660 and below **shall** be designated Non-exempt. The section head is not required to complete the FLSA Questionnaire for these employees, however, section heads are responsible for monitoring the salary of these employees.

Should the salary of any such employee exceed \$23,660 annually as a result of merit increase, promotion, reallocation, or any other pay action that raises him/her above \$23,660 annually, the section head must then follow the process described in Numbers 3 through 6 below to determine the appropriate status, Exempt or Non-exempt, for that employee.

Should the salary of any such employee fall below \$23,660 annually as the result of a demotion, the section head shall designate the employee as Non-exempt.

2. Non-Management Employees In Maintenance Construction and Similar Occupations Such As The Following Job Titles & Similar Job Titles Shall Be Non-Exempt Regardless of Annual Salary:

Carpenter, Electrician, Mechanic, Plumber, Iron Worker, Craftsman, Operating Engineer, Laborer, Construction Worker.

3. Employees Earning An Annual Salary Higher Than \$23,660 and not covered by Section V.A.2. above:

The FLSA status, either Exempt or Non-Exempt, of employees in positions earning an annual salary greater than \$23,660 will be determined by the section head based on completion of the FLSA Questionnaire (subject to confirmation by the Appointing Authority). The Questionnaire may be obtained from the Office of Human Resources website at <http://www.state.la.us/ohr> and includes the following: Executive Duties Test, Administrative Duties Test, Professional Duties Test, Computer Employee Professional Duties Test, and FLSA Index.

Complete the FLSA Questionnaire for any employee who makes more than \$23,660 annually and is not covered by Section V.A.2. above. A review of the position description is valuable; however, the Questionnaire must be answered based on the duties actually performed even if those duties differ from the duties indicated on the position description. Inaccurate position descriptions should be updated.

4. Discuss findings with supervisor for concurrence.
5. Discuss the FLSA status with the employee.

The discussion should include a review of the position description. If the employee does not agree with the status decision, the issue should be brought to the section head's attention. Unresolved issues should be discussed with staff of the Office of Human Resources.

6. Repeat this process if the duties of the employee change substantially.

B. The Reporting

Report the FLSA status to the Office of Human Resources and the Office of Finance and Support Services on a Personnel Action Request (PAR). Notate the FLSA status on the top of the duties page on the position description (SF-3) or on the SF-3A form (Position Description Optional Attachment).

C. The Documentation

Maintain the completed Questionnaire for review and audit purposes. Maintain records of any dispute between the agency and an employee regarding FLSA status, including any written statement from the agency or employee of the reasons for the decision and the disagreement.

VI. WORKING AN OVERTIME HOUR:

A. Prior Approval For Working Overtime:

Prior to working any overtime hour, the employee must seek and receive approval from the supervisor (or another individual who is authorized to make the approval). If the employee believes the situation to be of an emergency nature, and a supervisor (or authorized individual) cannot be reached, the employee may work the overtime. However, the event should be documented in writing and the overtime justified to the supervisor as soon as possible. If the supervisor determines that the employee's judgment about working overtime is inappropriate, the supervisor may instruct the employee that he/she may not work overtime in the future without specific prior approval.

B. Reporting of Overtime:

1. Overtime hours worked must be reported in writing along with an explanation of the nature of the work performed. If possible, all overtime should be recorded and entered into ISIS/HR during the pay period in which it was worked.

With the supervisor's approval, small increments of overtime worked may be recorded and credited at the point where the cumulative amount equals six minutes. In this event, precise documentation must be maintained to support the overtime entry, including date, time started and ended, nature of work performed.

2. Such a report of overtime hours worked must be signed as accurate by the employee and signed as approved by the section head or his/her designated representative.
3. Documentation of overtime worked is maintained in the section and must be available for review by authorized individuals.

VII. COMPENSATION FOR OVERTIME HOURS WORKED:

A. Non-Exempt Employees:

1. Who work overtime but do not actually work over 40 hours in a workweek (because of the hours of a holiday or hours of leave taken - sick, annual, compensatory) **shall be** compensated for overtime hours worked with straight time compensatory leave.
2. Who actually work over 40 hours in the workweek, in accordance with the FLSA any additional overtime hours worked **shall be** compensated with time and one half compensatory leave for each hour actually worked over 40 until the balance of time and one-half compensatory leave reaches 240 hours.

In accordance with the FLSA, a non-exempt employee cannot have a balance of time and a half compensatory leave that exceeds 240 hours. Therefore, if the balance for any employee reaches 240 hours, he/she will be compensated with time and one half pay for every hour actually worked over 40 hours in the workweek.

3. Who work overtime on a day which would have otherwise been his/her holiday or during an official closure **may be** paid time and one-half pay or straight time pay in addition to his/her regular pay with the following exceptions.
 - a. A non-exempt employee who does not work over 40 hours in a workweek and who works on a day which otherwise would have been his/her holiday, or while attending or traveling to and from a conference, convention, seminar, workshop, training course, study group, or related activity, **shall be** compensated with straight time compensatory leave in addition to the regular pay for the holiday (with the exception included in VII.3.b.)
 - b. A non-exempt employee who works over 40 hours in the workweek **shall be** compensated with time and one-half pay or

time and one-half compensatory leave for overtime hours worked even if that work was performed while attending or traveling to and from conventions, workshops, training courses, study groups, and related activities.

- B. Exempt** employees **shall be** compensated for overtime hours worked with straight time compensatory leave.

If that overtime is worked on a day which would have otherwise been his/her holiday or during an official closure, the employee shall earn straight time compensatory leave for hours worked on that day in addition to his/her regular pay.

- C.** Individuals in Student Appointments, Restricted Appointments, or When Actually Employed (WAE) Appointments shall receive overtime compensation as follows:

1. Non-Exempt employees who work:

- a.** less than 40 hours in a workweek will receive straight time pay, or
- b.** more than 40 hours in a workweek will receive time and one half pay for the excess over 40 hours.

2. Exempt employees who work overtime will receive straight time pay.

VIII. EXCEPTIONS TO OVERTIME COMPENSATION:

Any request to compensate overtime hours worked by a method not authorized in this policy must be submitted to the Appointing Authority in advance. Such a request must be in writing and fully justified. Any written approval must be forwarded to the Office of Human Resources as well as to the Office of Finance and Support Services.

IX. COMPLAINT MECHANISM FOR PAY DISPUTES:

The DOA will make every effort to ensure that an employee's pay is correct. However, any employee who believes he/she has been improperly paid or has had funds withheld from his/her paycheck inappropriately, should bring this to his/her manager's attention immediately upon discovering the error. Managers are responsible for researching the problem and resolving the pay dispute as quickly as possible. Upon resolution, the manager must inform the employee of

the outcome of the decision. Should it be discovered that the DOA has inadvertently improperly paid an employee, the employee will be reimbursed all funds that are due him/her.

In the event that an employee is inadvertently overpaid due to an administrative error, the DOA reserves the right to recoup any and all funds without the necessity of any action other than prior notification to the employee of the amount paid in error. The employee will be notified of the discrepancy and a method of recovering the funds will be determined by the Appointing Authority depending on the amount of overpayment.

X. RESPONSIBILITY:

DEPUTY UNDERSECRETARY/ASSISTANT COMMISSIONERS AND EQUIVALENT are responsible for:

Holding accountable the section heads under his/her supervision for adhering to all aspects of this policy.

Assuring the participation of all employees under his/her supervision (directly and indirectly) in all programs provided to educate employees regarding the FLSA and overtime issues.

SECTION HEADS are responsible for:

Assuring that each manager and employee under his/her supervision is made aware of this policy and its contents, as well as any forthcoming revisions.

Assuring compliance with all aspects of this policy, the FLSA, and Civil Service rules when compensating overtime.

Ensuring that all employees have read and understand the "Statement of Agreement or Understanding Regarding Compensation for Overtime Worked", and forwarding the signed statement to the Employee Administration Unit.

Informing employees regarding how overtime hours will be compensated.

Assuring the participation of all employees under his/her supervision (directly and indirectly) in all programs provided to educate employees regarding the FLSA and overtime compensation.

Assuring that FLSA status, Exempt and Non-exempt, for each employee is determined according to the process outlined in V.A. above, and that

supervisors meet with their employees to discuss the status determination, affording the employee an opportunity to have input.

Maintaining records of any dispute between the agency and the employee regarding FLSA status, including any written statement from the agency or employee of the reasons for the decision and the disagreement.

Reevaluating the FLSA status of any employee who has experienced a change in duties, and reporting a change in FLSA status on a PAR to the Office of Human Resources and the Employee Administration Unit (EA).

Maintaining appropriate records reflecting overtime hours worked, nature of work performed, signature of the employee who performed the overtime and signature of section head or delegated representative.

Monitoring the workload of all employees in order to minimize the need for overtime, and remedying any abuse by employees in the use of overtime.

MANAGERS/SUPERVISORS are responsible for:

Complying with this policy in any fashion instructed by the section head.

EMPLOYEES are responsible for:

Securing prior approval from the supervisor or the individual authorized by the section head prior to working any overtime hour.

Complying with all aspects of this policy.

OFFICE OF FINANCE AND SUPPORT SERVICES is responsible for:

Complying with all aspects of this policy.

Providing a copy of Personnel Policy No. 22, *Overtime, Compensation for Overtime*, and *Fair Labor Standards Act Status (Exempt and Non-Exempt)* to all new employees during New Employee Orientation and ensuring that all new employees read and sign the “*Statement of Agreement or Understanding Regarding Compensation for Overtime Worked*” form. EA is responsible for maintaining the signed form in the employee’s personnel file.

Copying any PAR received requesting change in FLSA to the Office of Human Resources.

Maintaining accurate FLSA status information in individual employees' records in ISIS.

OFFICE OF HUMAN RESOURCES is responsible for:

Reviewing all FLSA Questionnaires submitted by the section heads with the Appointing Authority.

Copying any PAR received requesting change in FLSA status to the Office of Finance and Support Services.

Maintaining accurate FLSA status information in position records in ISIS.

XI. EXCLUSIONS:

Requests for exceptions to this policy should be submitted to the Appointing Authority through the appropriate assistant/deputy commissioner along with specific and compelling justification.

Any exception to this policy must have the written approval of the Appointing Authority or his delegated representative.

XII. QUESTIONS:

Questions regarding this policy should be directed to staff of the Office of Human Resources.

NOTE: For more information on the Fair Labor Standards Act (FLSA) the following website is useful: <http://www.dol.gov/dol/compliance/comp-flsa.htm>

STATEMENT OF AGREEMENT OR UNDERSTANDING

RE: Compensation for Overtime Work

I, _____, understand that agencies of the State of Louisiana have the option of granting compensatory leave for overtime hours worked.

NON-EXEMPT EMPLOYEES: In cases where the Fair Labor Standards Act applies, such leave will be credited to non-exempt employees at the rate of one and one-half hour for each hour worked. For overtime hours worked during weeks when leave is taken (with or without pay), or when holidays are observed, the agency may opt to use straight-time cash payments or hour-for-hour compensatory leave to compensate non-exempt employees, in accordance with the Rules of the Department of State Civil Service.

EXEMPT EMPLOYEES: Agencies have the option of not granting overtime compensation at all to exempt employees; but if the agency chooses to compensate exempt employees for overtime, the agency may choose to compensate such employees with compensatory leave rather than cash payment.

PAYMENT OF COMPENSATORY LEAVE UPON SEPARATION:

- **NON-EXEMPT EMPLOYEES:** I also understand that non-exempt employees shall be paid upon separation for any time and one-half compensatory leave earned for overtime, as required by the Fair Labor Standards Act. Other straight, hour-for-hour compensatory leave may or may not be paid upon separation in accordance with the applicable Civil Service Rules. Any hour-for-hour compensatory leave that is not paid upon separation shall be cancelled.
- **EXEMPT EMPLOYEES:** Compensatory leave credited to exempt employees may or may not be paid upon separation in accordance with the applicable Civil Service Rules. Any such compensatory leave that is not paid, shall be cancelled, in accordance with the applicable Civil Service Rules.

I have read the above and agree to accept compensatory leave as compensation for overtime work.

Printed or Typed Name: _____ Personnel #: _____

Signature: _____ Date: _____